

## UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

KENDRA NICOLE WALKER,

No. C 13-03601 LB

Plaintiff,

v.

**ORDER GRANTING MB  
FINANCIAL'S MOTION TO STAY  
THIS ACTION AND SETTING  
STATUS CONFERENCE**

MB FINANCIAL BANK, N.A.,

Defendant.

[Re: ECF No. 11]

**INTRODUCTION**

Plaintiff Kendra Nicole Walker has sued defendant MB Financial Bank, N.A. in federal court. Complaint, ECF No. 1.<sup>1</sup> Pursuant to the court's diversity jurisdiction, she brings four state law claims that relate to MB Financial's handling of her trust. See generally First Amended Complaint, ECF No. 5. Pursuant to *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), MB Financial asks the court to stay the action until an earlier-filed, pending action in Illinois state court is resolved. Motion, ECF No. 11. Ms. Walker does not oppose a stay, but she disagrees with MB Financial over its length. See Opposition, ECF No. 27. Pursuant to Civil Local Rule 7-1(b), the court finds this matter suitable for determination without oral argument and **VACATES** the January 16, 2013 hearing. Upon consideration of the papers submitted and the applicable legal authority, the court **GRANTS** MB Financial's motion and **STAYS** this action until the Illinois

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<sup>1</sup> Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

1 Action is resolved in its entirety and the Illinois court enters judgment.

2 **STATEMENT**

3 There are two actions relevant here, both of which involve the administration of the Kendra  
4 Nicole Walker Trust Dated March 26, 2007 (the “Trust”). Ms. Walker and MB Financial are co-  
5 trustees of the Trust, and Ms. Walker is the sole beneficiary of it. In the first action (the “Illinois  
6 Action”), MB Financial, as Co-Trustee of the Trust, filed a petition in Illinois state court asking for  
7 declaratory relief against Ms. Walker, in her individual capacity, as well as Grantor, Co-Trustee, and  
8 Beneficiary of the Trust. *See* MB Financial Bank, N.A. v. Kendra Nicole Walker, No. C13-CH-  
9 15828 (Circuit Court of Cook County, Illinois, Chancery Division June 28, 2013); *see also* Strouse  
10 Declaration, Ex. A (“Petition”), ECF No. 12-1. In the second action (the “Federal Action”), Ms.  
11 Walker sued MB Financial for a variety of Illinois state law claims based on MB Financial’s  
12 administration of the Trust. *See* First Amended Complaint, ECF No. 5. The following factual  
13 allegations are taken from the MB Financial’s Petition in the State Action and Ms. Walker’s First  
14 Amended Complaint in the Federal Action.

15 According to MB Financial, in early 2013, Ms. Walker began making financial demands that  
16 were out of character, including the following: seeking \$250,000 to pay a non-refundable retainer  
17 fee to a California attorney for one year of services; texting a vice president of MB Financial on his  
18 personal cell phone to demand \$700,000 in distributions from the Trust without giving any  
19 explanation of what the money was for, refusing to have the money deposited into a bank of her  
20 choice, but rather paid to her directly; requesting \$800,000 for a down payment on a \$4 million  
21 Beverly Hills home without providing any details about the purchase. Petition ¶¶ 17, 18, 20, 22. In  
22 addition, MB Financial alleges in the Petition that daily \$1,000 withdrawals were made using Ms.  
23 Walker's ATM card, although she denies any knowledge of these withdrawals. *Id.* ¶ 21. Moreover,  
24 during that same time period, Ms. Walker demanded that she assume responsibility for making her  
25 rent and medical bill payments, but ultimately failed to pay them. *Id.* ¶ 19. She later agreed to allow  
26 MB Financial to resume making these payments when MB Financial brought past-due notices to Ms.  
27 Walker's attention. *Id.* MB Financial also alleges that it was informed by one of Ms. Walker's  
28 physicians that she was making poor decisions that “are jeopardizing her health and will shorten her

1 life,” and that she should be placed into a health care facility. *Id.* ¶ 24.

2 On June 20, 2013, MB Financial received an email copy of a document purporting to amend the  
3 Trust to remove it as Co-Trustee and to transfer funds to Charles Schwab. *Id.* ¶¶ 29-30 & Ex. F.  
4 MB Financial alleges that the document was improperly notarized and did not comply with the terms  
5 of the Trust for removal of a Co-Trustee. *Id.* ¶¶ 31-34.

6 On June 28, 2013, MB Financial received a copy of another document purporting to revoke the  
7 Trust in its entirety and transferring the marketable assets to Charles Schwab for the benefit of Ms.  
8 Walker. *Id.* ¶ 37.

9 That same day, as a result of Ms. Walker’s allegedly out-of-character financial demands and the  
10 purported Trust amendments, MB Financial initiated the State Action by filing its Petition asking the  
11 court to determine whether it could properly make the distributions that Ms. Walker has requested  
12 and whether the purported amendments to the Trust are valid. *See generally id.*

13 On August 2, 2013, over a month after the filing of the Illinois Action, Ms. Walker initiated the  
14 instant Federal Action pursuant to the federal diversity jurisdiction. Complaint, ECF No. 1. In her  
15 First Amended Complaint, she alleges four claims under Illinois law: conversion, intentional  
16 infliction of emotional distress, breach of fiduciary duty, and breach of contract. First Amended  
17 Complaint, ECF No. 5. Her claims all stem from her contention that MB Financial is interfering  
18 with her right to control and access the assets of the Trust and that the documents removing MB  
19 Financial as Trustee are valid. *See generally id.*

20 On September 23, 2013, in the Federal Action, MB Financial filed, pursuant to the *Colorado*  
21 *River* doctrine, a motion to stay this action until the Illinois Action is resolved. Motion, ECF No.  
22 11; *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). Ms. Walker  
23 does not oppose a stay, but she disagrees with MB Financial over its length. *See* Opposition, ECF  
24 No. 27. In the Illinois Action, Ms. Walker filed a motion for summary judgment, which currently is  
25 pending. *See* Reply, Ex. A, ECF No. 34 at 6-16. She argues that the Federal Action should be  
26 stayed only until the Illinois court rules on her pending summary judgment motion. *See* Opposition,  
27 ECF No. 27.

## ANALYSIS

### I. LEGAL STANDARD

Under the *Colorado River* doctrine, a federal court may abstain from exercising its jurisdiction in favor of parallel state proceedings where doing so would serve the interests of “[w]ise judicial administration, giving regard to the conservation of judicial resources and comprehensive disposition of litigation.” *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 818 (1976); *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 15 (1983). “Exact parallelism” between the state and federal actions is not required; it is enough if the two actions are “substantially similar.” *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir. 1989). Nonetheless, the Ninth Circuit has emphasized that “the *Colorado River* doctrine is a narrow exception to ‘the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.’” *Holder v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002) (quoting *Colorado River*, 424 U.S. at 817). Accordingly, a stay of proceedings pursuant to the *Colorado River* doctrine is appropriate only where “exceptional circumstances” are present. *Id.*

*Colorado River* and subsequent Ninth Circuit opinions have identified eight non-exhaustive factors to be considered on a motion for *Colorado River* stay or dismissal: (1) whether the state court first assumed jurisdiction over property; (2) inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained by the concurrent forums; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings are inadequate to protect the federal litigant’s rights; (7) whether exercising jurisdiction would promote forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court. *See id.* at 870; *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978-79 (9th Cir. 2011). These factors should be weighed in a “pragmatic, flexible manner with a view to the realities of the case at hand” and “with the balance heavily weighted in favor of the exercise of jurisdiction.” *Moses*, 460 U.S. at 16, 21. Factors that are irrelevant to the particular inquiry are disregarded. *See Nakash*, 882 F.2d at 1415 n.6.

“[D]istrict courts must stay, rather than dismiss, an action when they determine that they should defer to the state court proceedings under *Colorado River*.” *Coopers & Lybrand v. Sun-Diamond*

1 *Growers of CA*, 912 F.2d 1135, 1138 (9th Cir. 1990). This is to “ensure [ ] that the federal forum  
2 will remain open if for some unexpected reason the state forum does turn out to be inadequate,”  
3 “conserve court resources,” and avoid the risk of “mak[ing] premature and speculative legal findings  
4 about the preclusive effect of various possible state judgments in choosing between a stay and a  
5 dismissal.” *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 243, 245 (9th Cir. 1989)  
6 (quotation omitted).

7 **II. THE COURT WILL STAY THE FEDERAL ACTION UNTIL THE ILLINOIS ACTION**  
8 **IS RESOLVED**

9 Because the parties disagree about how long the Federal Action should be stayed for (i.e., only  
10 until the Illinois court rules on her pending summary judgment, as Ms. Walker wants; or until the  
11 Illinois Action is completely resolved, as MB Financial wants), the court addresses each of the  
12 factors bearing upon a Colorado River stay.

13 Neither party addresses the first factor—whether the state court first assumed jurisdiction over  
14 property. *See generally* Motion, ECF No. 11; Opposition, ECF No. 36; Reply, ECF No. 34. Even  
15 so, both actions involve the parties’ contractual and fiduciaries duties and obligations, not property  
16 *per se*. The court finds this factor to be irrelevant to the inquiry.

17 The second factor—inconvenience of the federal forum—is neutral. Ms. Walker argues that  
18 California is an inconvenient forum because the Trust was formed in Illinois and MB Financial is a  
19 citizen of Illinois, and therefore there will be “a large number” witnesses and evidence in that state.  
20 MB Financial, however, fails to specify any of these witnesses or provide the court with an idea  
21 about how much evidence is to be found in Illinois. On the other hand, Ms. Walker resides in  
22 California. On balance, the court does not believe that California is a particularly inconvenient  
23 forum.

24 The third factor—the desirability of avoiding piecemeal litigation—favors staying the Federal  
25 Action. “Piecemeal litigation occurs when different tribunals consider the same issue, thereby  
26 duplicating efforts and possibly reaching different results.” *R.R. St. & Co. Inc.*, 656 F.3d at 979  
27 (quotation omitted). Although the two actions involve different claims, all of those claims involve  
28 the administration of the Trust. Discovery taken in one action almost certainly will be relevant to

1 the other one. Ms. Walker’s fear that she will have to re-take the same discovery if the Federal  
2 Action is stayed is unwarranted because the parties could agree to use discovery for both actions.  
3 Moreover, Ms. Walker acknowledges that, through her summary judgment motion, she has already  
4 asked the Illinois court to decide whether she properly revoked the Trust, and she admits the court’s  
5 decision will have “some effect on” the Federal Action. Opposition, ECF No. 5. But this court will  
6 have to make the same determination to decide her claims here. *See generally* First Amended  
7 Complaint, ECF No. 5. This is piecemeal litigation.

8 The fourth factor—the order in which jurisdiction was obtained by the concurrent forums—also  
9 favors staying the Federal Action. While MB Financial filed the Illinois Action about a month  
10 before Ms. Walker filed the Federal Action, this does not end the inquiry. The Ninth Circuit has  
11 explained that “it is important not only to determine whether the state or the federal complaint was  
12 filed first, but also to assess how much progress has been made in the two actions.” *Am. Int’l*  
13 *Underwriters (Philippines), Inc. v. Cont’l Ins. Co.*, 843 F.2d 1253, 1257 (9th Cir. 1988) (citation  
14 omitted). And here, the Illinois Action is farther along: in the Illinois Action there are pending  
15 summary judgment proceedings, but in the Federal Action, nothing has occurred except the filing of  
16 the instant motion to stay; the court has not even had a case management conference.

17 The fifth factor—whether federal law or state law provides the rule of decision on the  
18 merits—clearly favors staying the Federal Action. MB Financial brought state law claims in Illinois  
19 state court. Ms. Walker’s suit is in federal court because of diversity jurisdiction, and she brings  
20 four claims that arise under Illinois law. There is no doubt that the Illinois court is better suited to  
21 decide issues that involve Illinois law. *See Bushansky v. Armacost*, No. C 12–01597 WHA, 2012  
22 WL 3276937, at \*4 (N.D. Cal. Aug. 9, 2012) (“Given the high likelihood that this entire case is  
23 governed by Delaware law, there is wisdom in letting Delaware judges decide these issues.”). And  
24 “[t]he absence of federal law claims in this case removes one concern which might otherwise  
25 override considerations such as avoiding piecemeal litigation.” *Janupaul + Block Companies, LLC*  
26 *v. St. Paul Fire and Marine Ins. Co.*, 830 F. Supp. 2d 976, 985 (S.D. Cal. 2011).

27 The sixth factor—whether the state court proceedings are inadequate to protect the federal  
28 litigant’s rights—also favors staying the Federal Action. “This factor is most often employed, and is

1 most important, where there are exclusively federal claims that could not be brought as part of the  
2 state-court action.” *Bushansky*, 2012 WL 3276937, at \*4 (citing *R.R. St. & Co. Inc.*, 656 F.3d at  
3 981). This is because “[t]his factor involves the *state* court’s adequacy to protect *federal* rights, not  
4 the federal court’s adequacy to protect state rights.” *Travelers Indem. Co. v. Madonna*, 914 F.2d  
5 1364, 1370 (9th Cir. 1990) (citing *Moses*, 460 U.S. at 26). Here, there are no federal rights to be  
6 protected in either action.

7 The seventh factor—whether exercising jurisdiction would promote forum shopping—does not  
8 favor staying the Federal Action. The Ninth Circuit has held that “courts may consider the vexatious  
9 or reactive nature of either the federal or the state litigation” in an effort to avoid forum  
10 shopping—“[t]he practice of choosing the most favorable jurisdiction or court in which a claim  
11 might be heard.” *R.R. St. & Co. Inc.*, 656 F.3d at 981 (quotation omitted). MB Financial does not  
12 address this factor in its papers, and the court has no reason to think that Ms. Walker has engaged in  
13 forum shopping. *Cf. Bushansky*, 2012 WL 3276937, at \*5 (finding the federal action potentially to  
14 be “vexatious and reactive” where the federal complaint lifted identical text from the state action and  
15 made only minor modifications to the claims and relief, the state action was highly publicized, and  
16 the federal plaintiff chose to file a substantially similar federal suit than make his legal challenge in  
17 the state actions).

18 Finally, the eight factor—whether the state court proceedings will resolve all issues before the  
19 federal court—favors staying the action. With respect to this factor, substantial doubt about whether  
20 the state proceedings will resolve the federal action generally precludes the granting of a stay  
21 pursuant to *Colorado River*. *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir.  
22 1993). But this does not mean that the actions need to be identical for the state court proceedings to  
23 resolve all of the issues before the federal court. Indeed, as the Seventh Circuit has made clear:  
24 “Just as the parallel nature of the actions cannot be destroyed by simply tacking on a few more  
25 defendants, neither can it be dispelled by repackaging the same issue under different causes of  
26 action.” *Clark v. Lacy*, 376 F.3d 682, 686-87 (7th Cir. 2004) (finding federal and state actions to be  
27 parallel where the “additional” claims in the federal complaint (abuse of control, gross  
28 mismanagement, and waste of corporate assets) were premised on the defendants’ alleged breach of



1 their fiduciary duties). Here, as mentioned above, while the two actions contain different  
2 claims—MB Financial brings a claim for declaratory relief in the Illinois Action and Ms. Walker  
3 brings claims for conversion, intentional infliction of emotional distress, breach of fiduciary duty,  
4 and breach of contract in the Federal Action—they all are based on the issues of whether Ms.  
5 Walker properly revoked the Trust and whether MB Financial must comply with her disbursement  
6 demands. Ms. Walker argues that the cases are not parallel because MB Financial is merely a  
7 “stakeholder” in the Illinois Action but is a defendant sued for damages in the Federal Action, but  
8 the court does not see how the relief changes things. She also argues that there are certain factual  
9 allegations at issue in the Federal Action that are not at issue in the Illinois Action (*i.e.*, \$400,000 in  
10 payments made by MB Financial to an attorney retained by Ms. Walker; MB Financial’s oversight  
11 of Ms. Walker’s investments; MB Financial’s failure to provide her with certain information), but as  
12 MB Financial points out in reply, Ms. Walker has raised these allegations in her summary judgment  
13 motion that is pending in the Illinois Action. *See* Reply, ECF No. 34 at 3. Accordingly, the court  
14 finds that the two actions are “substantially similar” and that the Illinois Action, while it may not  
15 resolve Ms. Walker’s individual claims, it likely will resolve the issues that underlie them.

16 As five of the factors support staying the Federal Action, and only one factor does not support it,  
17 the court grants MB Financial’s motion. The court does not see why the Federal Action should be  
18 stayed only until the Illinois court rules on Ms. Walker’s summary judgment motion, however. It is  
19 not clear that the Illinois court’s ruling on Ms. Walker summary judgment will resolve all of the  
20 issues. Staying the case until the Illinois Action is resolved entirely also will “ensure [ ] that the  
21 federal forum will remain open if for some unexpected reason the state forum does turn out to be  
22 inadequate,” “conserve court resources,” and avoid the risk of “mak[ing] premature and speculative  
23 legal findings about the preclusive effect of various possible state judgments.” *Attwood*, 886 F.2d at  
24 243, 245.

### 25 CONCLUSION

26 Based on the foregoing, the court **GRANTS** MB Financial’s motion. This action is **STAYED**  
27 until the Illinois Action is resolved in its entirety and the Illinois court enters judgment. Once the  
28 Illinois Court enters judgment, the parties shall file a joint status update about lifting the stay of this



1 action. In addition, the court **SETS** a status conference for March 27, 2014. The parties may appear  
2 at it by telephone through Courtcall. The parties shall file a joint status update regarding the Illinois  
3 Action no later than March 20, 2014.

4 **IT IS SO ORDERED.**

5 Dated: January 15, 2014



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6 LAUREL BEELER  
7 United States Magistrate Judge  
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